

## **RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS**

### **(a) Order for Examination.**

When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. A party or person may not be required to travel an unreasonable distance for an examination. The party requesting the examination shall pay the examiner and shall advance all necessary expenses to be incurred by the party or person in complying with the order.

### **(b) Report of Examiner.**

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with

the provisions of any other rule.

**(c) Limited Applicability to Actions Under Title 93 of the Mississippi Code of 1972.** This rule does not apply to actions under Title 93 of the Mississippi Code of 1972, except in the discretion of the Chancery Judge.

[Adopted effective January 16, 2003. ]

#### **Advisory Committee Historical Note**

Effective January 16, 2003, Rule 35 was adopted to allow a court to order a physical or mental examination of a person for good cause on motion. \_\_\_\_ So.2d \_\_\_\_ (West Miss. Cases \_\_\_\_).